

To: Guy Alsentzer[guy@uppermissouriwaterkeeper.org]
From: Laidlaw, Tina
Sent: Fri 12/5/2014 8:24:01 PM
Subject: RE: MT Nutrient Rule Pkg Implementation

Hi Guy,

Thanks for your email. I'll look into things and get back to you.

Tina

From: Guy Alsentzer [mailto:guy@uppermissouriwaterkeeper.org]
Sent: Thursday, December 04, 2014 5:33 PM
To: Laidlaw, Tina
Subject: MT Nutrient Rule Pkg Implementation

Hi Tina -

Emailing you to follow-up on the brief conversation we had a few weeks back regarding MT DEQ's implementation of the numeric nutrient rule, and the related variance provision, prior to R8 action on of the rule package.

Please see the attached, proposed Montana WWTP MPDES permit currently out for public comment at pp.13-14 (discussing and apparently assuming coverage under a variance per DEQ's new rule to explain validity of noncompliance with N and P discharges), and Appx. III at pp.25 (discussing and again apparently assuming coverage under a variance).

As a preliminary matter I am conceptually setting aside, for the moment, the fact that the instant WWTP disposes of effluent via land application and allegedly does not therefore discharge to

surface waters.

Our concern at the moment is programmatic. Specifically, that DEQ appears to be implementing the nutrient rule package, and in particular applying/assuming coverage under variances for point source dischargers of nutrients, without EPA R8 action on the rule package. Even setting aside that broader issue, this permit raises a significant CWA implementation issue in that there is apparently no public notice or participation opportunity concerning the alleged coverage of such a facility under a variance, from EPA or DEQ. We find this troubling as a variance proposal requires public notice and comment procedures under Montana state law and federal regulations.

33 U.S.C. §1313(c)(1)-(4), 40 C.F.R. §131.20(c), and 40 C.F.R. §131.21(a)-(c) stand for the proposition that any water quality standards proposed or revised by the state of Montana must be reviewed and approved by EPA. Implicit in that mandate is that WQS are not effective until such approval occurs. This affirmative "review" duty of EPA ensures that delegated state programs implement the "forward motion" for water quality and no undue degradation that is dictated by the Clean Water Act.

I would greatly appreciate it if you would consider this issue and, as necessary, discuss it and our concerns with your R8 colleagues. In turn, we respectfully request an informational call with you and/or others at EPA concerning this issue in the near future.

Don't hesitate to call with any questions.

Sincerely,

GA

Guy Alsentzer, Esq.

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